

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Danny Brown,

No. CV-15-514-TUC-JGZ

Petitioner,

ORDER

V.

Charles Ryan, et al.,

Respondents.

Pending before the Court is a Report and Recommendation issued by United States Magistrate Bruce G. Macdonald that recommends denying Petitioner's Amended Habeas Petition filed pursuant to 28 U.S.C. §2254 and granting in part and denying in part Petitioner's Adendum [sic] Motion to Grant Writ.¹ (Doc. 40.) As thoroughly explained by Magistrate Judge Macdonald, the claims in Petitioner's petition are procedurally defaulted and/or without merit. As Petitioner's objections (Doc. 43) do not undermine the analysis and proper conclusion reached by Magistrate Judge Macdonald, Petitioner's objections are rejected and the Report and Recommendation is adopted.

Also pending before the Court are two motions filed by Petitioner on May 1, 2017: a Motion for Leave to File Petition for P.C.R. / Exhaust State Remedies and a Motion to Stay Proceedings. (Docs. 41, 42.) In the pending Motions, Petitioner asks this Court to stay review of his Amended §2254 Petition while he pursues exhaustion of his claims in

¹ The Magistrate Judge recommended that Petitioner's Ademdum [sic] Motion to Grant Writ (Doc. 34) be granted to the extent it seeks a ruling on Petitioner's §2254 Petition, and denied in all other respects.

1 state court. As explained in Judge Macdonald's R&R, Petitioner's unexhausted claims
2 would be precluded by the Arizona courts if Petitioner were to attempt to raise them in a
3 subsequent state court petition for post-conviction relief. Accordingly, the Court will
4 deny Petitioner's Motions.

5 Before Petitioner can appeal this Court's judgment, a certificate of appealability
6 must issue. *See* Fed. R. App. P. 22(b)(1) (the applicant cannot take an appeal unless a
7 circuit justice or a circuit or district judge issues a certificate of appealability under 28
8 U.S.C. § 2253(c)). Additionally, 28 U.S.C. §2253(c)(2) provides that a certificate may
9 issue only if the applicant has made a substantial showing of the denial of a constitutional
10 right. In the certificate, the court must indicate which specific issues satisfy this showing.
11 *See* 28 U.S.C. §2253(c)(3). A substantial showing is made when the resolution of an
12 issue of appeal is debatable among reasonable jurists, if courts could resolve the issues
13 differently, or if the issue deserves further proceedings. *See Slack v. McDaniel*, 529 U.S.
14 473, 484-85 (2000). Upon review of the record in light of the standards for granting a
15 certificate of appealability, the Court concludes that a certificate shall not issue as the
16 resolution of the petition is not debatable among reasonable jurists and does not deserve
17 further proceedings.

18 Accordingly, IT IS HEREBY ORDERED as follows:

- 19 1. The Report and Recommendation (Doc. 40) is accepted and adopted;
- 20 2. Petitioner's Amended §2254 Petition (Doc. 7) is denied;
- 21 3. To the extent that Petitioner's Ademdum [sic] Motion to Grant Writ (Doc. 34)
22 seeks a ruling on his Amended §2254 Petition, the Motion is GRANTED. The
23 Ademdum [sic] Motion to Grant Writ is denied in all other respects.

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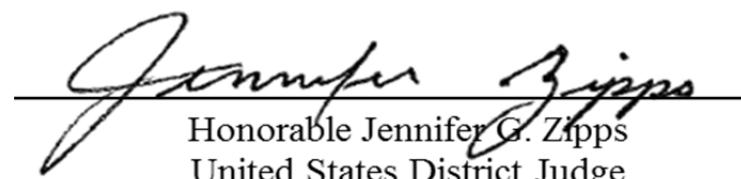
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- 1 4. Petitioner's Motion for Leave to File Petition for P.C.R. / Exhaust State Remedies
2 and Motion to Stay Proceedings (Docs. 41, 42) are DENIED;
3 5. A Certificate of Appealability is denied and shall not issue; and
4 6. This case is dismissed with prejudice. The Clerk of the Court shall enter judgment
5 accordingly and close the file in this matter.

6 Dated this 31st day of May, 2017.

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10 Honorable Jennifer G. Zipps
11 United States District Judge

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